

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERIC ZAHLER,

Petitioner,

vs.

DR. IMELDA BORROMEO, DR.
PATERAS, and UNKNOWN NUMBER OF
UNKNOWN NAMED AGENTS OF STATE
OF WASHINGTON,

Respondents.

NO. CV-10-3060-CI

**ORDER ADOPTING REPORT AND
RECOMMENDATIONS, DISMISSING
HABEAS ACTION, AND DENYING
PENDING MOTIONS**

BEFORE THE COURT is Petitioner's Objection to the Report and Recommendation to Dismiss (ECF No. 19). Mr. Zahler is proceeding *pro se* and *in forma pauperis*; Respondents have not been served. On January 21, 2011, Magistrate Judge Imbrogno issued Reports and Recommendations to dismiss this habeas action for failure to exhaust state remedies and to deny Mr. Zahler's pending motions (ECF Nos. 17 & 18).¹

In his objection, Petitioner claims the Magistrate Judge "presented a misleading interpretation of [his] argument." (ECF No. 19.)

¹ The Court notes Mr. Zahler previously filed an "Objection" to the Magistrate Judge considering his case (ECF No. 10) and presented a "Notice" to the Ninth Circuit Court of Appeals regarding the processing of this habeas action (ECF No. 14).

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1 Petitioner argues the State of Washington is not a State of the United
2 States. He claims there is no evidence the State of Washington was
3 admitted to the Union, but that Yakama Nation was. Mr. Zahler further
4 argues the State of Washington is unlawfully occupying the Yakama Nation
5 and other land within the United States. The Court finds Mr. Zahler has
6 made his assertions in a disrespectful manner and admonishes Petitioner
7 to conduct himself with civility in any further interaction with the
8 Court.

9 Furthermore, Mr. Zahler's arguments have no basis in law. The
10 Yakama Nation is a federally-recognized Indian tribe. 1855 Treaty with
11 the Yakama, 12 Stat. 951. In 1855, the United States began "a hasty
12 effort to clear land occupied by Indians for development by settlers" in
13 Washington Territory. *United States v. Oregon*, 29 F.3d 481, 484 (9th
14 Cir. 1994) ("*Oregon I* "), as amended, 43 F.3d 1284 (9th Cir. 1994).
15 Under the 1855 Treaty with the Yakama, "the tribes gave up most of their
16 lands in return for a specific reservation with set boundaries." *Oregon*
17 *II*, 470 F.3d at 811. The land for the reservation was subsequently
18 surveyed and "set apart as provided in the treaty." *Id.*

19 By proclamation No. 8 of President Benjamin Harrison, November 11,
20 1889, 26 Stat. 10, the Territory of Washington was admitted to the Union
21 as the State of Washington. The President certified that the state had
22 complied with the provision of the Enabling Act, that the new state's
23 constitution provided for a republican form of government, and that it
24 would make no distinction in civil or political rights on account of
25 race or color, "except as to Indians not taxed." *Anderson v. O'Brien*,

1 84 Wash.2d 64, 86, 524 P.2d 390, 403 (1974).

2 Washington has limited its jurisdiction by not retaining
3 jurisdiction over "Indians when on their tribal lands or allotted lands
4 within an established Indian reservation and held in trust by the United
5 States." RCW 37.12.010. Mr. Zahler does not claim to be a member of
6 the Yakama Nation. He does not assert the crimes of which he is
7 presently charged occurred on the Yakama Reservation. Apart from his
8 expressed opinions, Mr. Zahler has no standing to challenge the actions
9 of the State of Washington in relation to the Yakama Nation.

10 After review of the file and for the reasons set forth above and by
11 the Magistrate Judge, **IT IS ORDERED** the Reports and Recommendations (ECF
12 Nos. 17 & 18) are **ADOPTED** in their entirety, this habeas action is
13 **DISMISSED without prejudice** to Petitioner seeking appropriate relief in
14 the state courts, and the pending Motions are **DENIED as moot**.

15 **IT IS SO ORDERED.** The District Court Executive shall enter this
16 Order, enter judgment, forward copies to Petitioner at his last known
17 address and close the file. The Court further certifies that pursuant
18 to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
19 taken in good faith, and there is no basis upon which to issue a
20 certificate of appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

21 **DATED** this 18th day of February 2011.

22
23
24 S/ Edward F. Shea
25 EDWARD F. SHEA
United States District Judge

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28 AND DENYING PENDING MOTIONS -- 3